

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

District : Bharuch

SPECIAL CIVIL APPLICATION NO. 4402 OF 1996

Gulam Ismail Patel & Ors. : Petitioners

Versus

State of Gujarat & anr. : Respondents

Appearance :

Mr R N Shah, Ld. Advocate for the petitioners.

Coram : B.C. Patel & S.M. Soni, JJ.

27th June, 1996

Oral Order : (Per B.C. Patel, J.)

Petitioners by filing this petition have challenged the issuance of notification vide Annexure "D" issued under Sec. 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on the ground that the said notification is illegal, discriminatory and violative of Article 300 A of the Constitution of India.

2. Mr Shah, learned Advocate for the petitioners contended that the said notification is required to be quashed and set aside as there is no urgency and there is no good reason as to why the procedure laid down in the Act for declaring the award should not be completed by the Special Land Acquisition Officer.

3. To appreciate the question raised by the learned Advocate, it is necessary to have some facts. Petitioners are claiming that they are the owners of lands mentioned in the notification under Sec. 6 Annexure- "D" to the petition. These lands are situated at Village Kodhh, Tal. Valia, District Bharuch. By issuing a notification vide Annexure - A under Sec. 4 of the Act, the public at large were informed that the lands mentioned in the notification are likely to be needed for a public purpose. There is no dispute that after issuance of notification, a separate notice was served individually to the petitioners and they filed their objections and an enquiry was held under Sec. 5 A of the Act. After hearing the petitioners, a report was made in accordance with law and the notification under Sec. 6

has been published, on being satisfied after considering the report under Sec. 5 A of the Act. In the notification Annexure "D", the intention of the State Government that it will exercise powers under Sec. 17 (1) of the Act was made known to the public at large. It was specifically mentioned that the Special Land Acquisition Officer shall exercise powers only after 15 days of issuance of notice under Sec. 9(1) of the Act. A notice under Sec. 9(1) has been issued and a notice dated 11.6.1996 under Sec. 9 (3) & (4) has also been issued to the persons concerned. A copy of which is annexed at Annexure - "E".

4. With a view to have clear picture of the submissions made by the learned Advocate, it is necessary to narrate the procedure to be followed after issuance of notification under Sec. 6 of the Act. After declaration under Sec. 6 of the Act, the Collector has to take order for acquisition and land is to be marked out, measured and planned. Thereafter, under Sec. 8 unless the land has been already marked out under Sec. 4, the land is required to be marked out and measured, if not measured so far, and if no plan has been made thereof, the Collector has to prepare a plan for the same. After this exercise is over, notice to persons interested is required to be issued under Sec. 9. Under Sec. 10 the Collector has power to require and enforce the making of statements as to names and interests and persons interested in the land. On the day fixed or on which the enquiry is adjourned, after considering the objections submitted in pursuance of the notice under Sec. 9 to the measurements made under Sec. 8 and into the value of the land at the date of the publication of the notification under Sec. 4(1), and into the respective interests of the persons claiming the compensation, the Collector has to make an award under his hand of the true area of the land; the compensation which in his opinion should be allowed for the land; and the apportionment of the said compensation if required to be declared. Mr Shah, learned Advocate states that the notice is issued under Sec. 9 and therefore, without completing enquiry as contemplated, the possession of the land cannot be taken. His contention is that in the notification issued under sec. 4, there was no declaration of any emergency and therefore, the same is required to be quashed and set aside. Sec. 17 reads as under :-

"17. Special powers in cases of urgency : (1)

In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration

of fifteen days from the publication of the notice mentioned in Sec.9, sub-section (1) take possession of any land needed for a public purpose or for a company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

- (2) Whenever, owing to any sudden charge in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station or the appropriate Government considered it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government, free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

- (3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not expected in Sec. 24, and in case such offer is not accepted, the value of such crops and trees and the amount of such other damages shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3) -

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Sec. 31, sub-section (2),

and where the Collector is so prevented, the provisions of Sec. 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered under Sec. 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Sec. 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct the provisions of Sec. 5-A shall not apply, and if it does so direct, a declaration may be made under Sec. 6 in respect of land at any time after the date of the publication of the notification under Sec. 4, sub-section (1)."

It is clear from sub-section (1) of Sec. 17 that in case of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned under section 9(1) take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances. If sub-section (4) is perused, it empowers the Government to dispense with the enquiry under Sec. 5 A. In the instant case,

the State Government has not dispensed with the enquiry, but after completing the enquiry and after receipt of the report, on being satisfied, notification under Sec. 6 has been issued and after being satisfied, the Government has already declared its intention to exercise powers under Sec. 17(1) of the Act.

Thus, after hearing the persons likely to be affected, notification under Sec. 6 has been published and only the State Government has directed to take possession before declaring the award, but at the same time, in view of the mandate of Sec. 17 (3-A). the Collector shall have to tender payment of eighty per cent of compensation for such land as estimated by him to the persons interested entitled thereto. We are not dealing with other part of Sec. 3-A, but we are only indicating that before taking possession without award being declared, the duty is cast on the Collector to make the payment as laid down in the Section. Therefore, we find no merits in the contention of Mr Shah that the land is to be acquired without payment of money. His apprehension is that the petitioners will be deprived of the land without compensation which in view of this provisions is not well founded.

5. The contention that urgency could not have been invoked. Mr Shah, learned Advocate relied on the judgment of the Supreme Court in the case of Raja Anand Vs. State of U.P. reported in AIR 1967 SC 1081. In that case, Sec. 5 A enquiry was dispensed with and the land in dispute was required to be determined whether it was waste or arable land or Forest land. In the facts of the case, the Court accepted the contention that the land was covered by large number of trees and cannot be treated as "waste or arable land" within Sec. 17(1) or (4) of the Act. Sec. 17(1) of the Act could not have been attracted and therefore, the State Government had no authority to give direction to the Collector to take possession of the lands under Sec. 17 (1) of the Act. In the instant case, there is no question of waste or arable land or Forest land and in view of the facts of that case, the principle laid down in that case is not application to the facts of this case.

6. Mr Shah has relied on a judgment delivered by a learned Single Judge of Delhi High Court in the case of Sudhir Chaudhary Vs. Union of India, reported in AIR 1995 page 391. In that case, the property in question was a residential property, however, it was to be used for commercial purposes, which is against the provisions of the lease deed as well as of the Master Plan. The

property which was earlier requisitioned under the Requisitioning and Acquisition of immoveable Property Act, on the lapse of the said Act on 10th March, 1987 could not have been acquired by clamping the impugned notification which is nothing but a fraud on the power of the Administration. As held by that Court, it was a case of mala fide exercise of powers by resorting to the provisions of Sec. 17 (1) of the Act and in view of the facts and circumstances of the case, the Court quashed the notification. It is required to be noted that in that case there was sufficient time to make alternative arrangement for shifting the offices. Therefore, there was no need to exercise powers.

7. Mr Shah has relied on the decision of a Division Bench of Allahabad High Court in the case of Jai Gurudev Dharam Pracharak Sangh Vs. State of U.P., reported in AIR 1985, All. 158 wherein also the enquiry under Sec. 5 A was dispensed with. The Court was of the view that the normal procedure of giving an individual his right to file objection should not be taken away merely because a decision has been taken to industrially develop a city. In the instant case, an enquiry is held. Petitioners' representations are considered and they have been heard. On considering the report and on being satisfied, the notification has been issued and in this case under Sec. 17(1) after following the enquiry what is postponed is the pronouncement of an award and the possession is to be taken on payment of eighty per cent of the amount as per law which may be estimated by the Collector. It is known fact that very often persons interested in the land which is to be acquired make various representations to the concerned authorities which result in a multiplicity of enquiries, communications and discussion leading invariably to delay in the execution of even urgent projects. Very often makes a problem more and more acute and increases the urgency and the necessity for acquisition. Before the apex Court a ground was raised that considerable length of time was taken on inter-departmental discussion before the notification for acquisition under Sec. 4(1) was published. In the case of Deepak Pahwa vs. Lt. Governor of Delhi, reported in AIR 1984 SC 1721, while considering the aforesaid aspects, the Court held that it is not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void.

8. It is required to be noted that if sec. 17(4) of the Act is applied, summary proceedings under Sec. 5 A of the Act is to be eliminated. it is not just the

existence of an urgency but the need to dispense with the enquiry under Sec. 5 A of the Act. When the procedure is followed, enquiry is held, only declaration of award is postponed and possession is to be taken after payment to persons interested as contemplated under Sec. 17 (3) and (3-A) question raises a different complexion. The Apex Court in the case of Jetmull Bhojraj Vs. State of Bihar, reported in AIR 1972 SC 1363 held as under :-

".... In our judgment Section 17 (1) is plain and unambiguous. The expression "whenever the appropriate Government so directs" in that section refers to the taking of possession and not to the declaration of urgency. Even in cases of urgency, the Government may not think it necessary to take immediate possession for good reasons. Neither the language of Section 17 (1) nor public interest justifies the construction sought to be placed by the learned Counsel for the appellant."

9. It is required to be noted that the High Court is not a Court of Appeal over the subjective satisfaction and the opinion of the Government is entitled to great weight. In the instant case, in the absence of actual mala fide, it is difficult to say that subjective satisfaction of the Government is not based on the material on record. The Apex Court in the case of Union of India vs. Ghanshayam Dass Kedia, reported in (1996) 2 SCC 285 has held as under :

"The High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight."

10. The Apex Court in the case of Chameli Singh Vs. State of U.P, reported in (1996) 2 SCC 549 has held as under :

"The opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power."

11. The argument that the State could have weighted till the declaration of the award is also required to be rejected because exercising the power under Sec. 17 (1) cannot be strucked down when the Government was of the

opinion that it urgently requires possession of the land for industrial purposes which would provide employment to a large number of people.

12. In the instant case, after issuance of notification and after considering the objections raised by the petitioners, the Special Land Acquisition Officer forwarded his report under the Act and after being satisfied the appropriate Government has issued notification under Sec. 6 of the Act. No actual mala fides are alleged against the authority exercising powers. Therefore, in our opinion, it would not be a fit case to interfere in the matter. Hence, we reject this petition.

Sd/-

(B.C. Patel, J.)

Sd/-

27/06/1996 (S.M. Soni, J.)

ssm./